

LAW OFFICES

A PROFESSIONAL CORPORATION

880 HAMILTON AVENUE

© 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679,

PACO ACTO, CALIFORNIA 94301
 800-451-4511, 415-351-0000

TELEPHONE (415) 321-5000

MAY 2 1980

U. W. L. Report

2. That on behalf of Exidy, Inc., I have met with and discussed the various disagreements between Exidy and Cinematronics arising out of the purchase of Vectorbeam with attorney Phillip DeCaro. He indicated he represented Cinematronics in those discussions. Mr. DeCaro sent to me a letter on behalf of Cinematronics appointing an arbitrator

1 with respect to a dispute involving certain inventory problems.

2 A copy of this letter is attached hereto as Exhibit "A".

3 Notwithstanding Mr. DeCaro's acting on behalf of
4 Cinematronics, Cinematronics apparently notified Vectorbeam
5 of its intent to seek a Temporary Restraining Order, by
6 leaving word with Mr. DeCaro, its own attorney (see Declaration
7 of David K. Demergian).

8 3. On April 17, 1980, I caused to be filed the Complaint
9 entitled "Exidy, Inc. vs. Cinematronics, Inc." in Santa
10 Clara County Superior Court, Docket No. 448656. A true copy
11 of said Complaint is attached hereto as Exhibit "B".

12 4. Notwithstanding my prior negotiations with Mr.
13 DeCaro, I was never notified of Cinematronics' intent to
14 seek a Temporary Restraining Order.

15 5. I am representing defendants with respect to a
16 claim of Mr. Gil Levine for breach of an employment agreement.
17 Attached hereto as Exhibit "C" are letters received from Mr.
18 Levine's attorney which describe the claim being made and
19 which indicate that Mr. Pierce, on behalf of Vectorbeam, has
20 specifically reinstated the Employment Agreement after Mr.
21 Levine's voluntary resignation. Mr. Levine's claim is
22 alleged to be \$216,000 plus attorney's fees.

23 I declare under penalty of perjury that the foregoing

24 ////

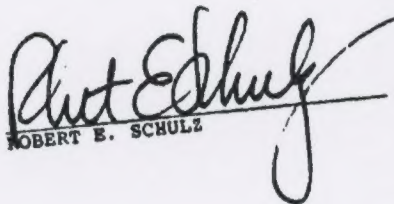
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26

1 is true and correct.

2 Executed this 29th day of April, 1980, at Palo Alto,

3 California.

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ROBERT E. SCHULZ

Law Offices of

Phillip Seymour DeCaro

A LAW CORPORATION

20 CIERVOS ROAD
PORTOLA VALLEY, CA 94028
TELEPHONE (415) 851-8500

March 28, 1980

Robert E. Schulz
550 Hamilton Ave.
Palo Alto, Ca.

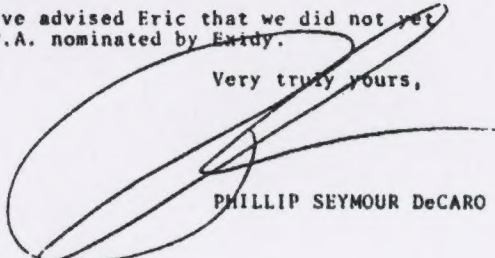
Re: Cinematronics-Exidy Sale and
Purchase of Vectorbeam

Dear Bob:

This note will confirm that Eric Hart, C.P.A., of Hart, Chester, C.P.A.'s will be the Cinematronics nominee to attempt to resolve the adjustment claims raised by Exidy under the Purchase Agreement.

I've advised Eric that we did not yet have any C.P.A. nominated by Exidy.

Very truly yours,



PHILLIP SEYMOUR DeCARO

PSD:ag

cc: Cinematronics, Inc.
Eric Hart, C.P.A.

EXHIBIT A

LAW OFFICES
CRIST, CRIST, GRIFFITHS, BRYANT, SCHULZ & BIORN
A PROFESSIONAL CORPORATION
880 HAMILTON AVENUE
PALO ALTO, CALIFORNIA 94301
TELEPHONE (415) 321-8000

(ENDORSED)
FILED
APR 17 1980

JOHN KAZUBOWSKI, Clerk

ATTORNEYS FOR Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

EXIDY, INC., a California
corporation,

Plaintiff,

vs.

CINEMATRONICS, INC., a
California corporation,
DOES 1-100,

Defendants.

No. 448565
COMPLAINT FOR DAMAGES
AND REFORMATION

Plaintiff alleges:

FIRST CAUSE OF ACTION
(FRAUD)

I

Exidy, Inc., is and at all times herein mentioned was a corporation duly organized and existing under the laws of the State of California, with its principal place of business in Santa Clara County.

II

Cinematronics, Inc., is, and at all times herein mentioned was, a corporation duly organized and existing under the laws

EXHIBIT B

1 of the State of California.

2 III

3 By the terms of the Stock Purchase Agreement at issue
4 in this action, the parties thereto agreed that venue in an
5 action on said Stock Purchase Agreement would be proper in
6 Santa Clara County.

7 IV

8 Plaintiff alleges on information and belief that Phillip S.
9 DeCaro was at all relevant times herein a shareholder and
10 director of Cinematronics, Inc. Plaintiff alleges that Jim
11 Pierce and Thomas B. Stroud, Jr., were at all times herein
12 officers and directors of Cinematronics, Inc.

13 V

14 At all times herein mentioned, Phillip S. DeCaro, Jim Pierce
15 and Thomas B. Stroud, Jr., were authorized and empowered by
16 Cinematronics, Inc., to act, and did act as the agent of
17 Cinematronics, Inc., and each and all of the things herein
18 alleged to have been done by them were done in the capacity
19 of and as agent for said Cinematronics.

20 VI

21 Plaintiff is informed and believes and thereon alleges
22 that at all times herein mentioned each of the defendants was
23 the agent and employee of each of the remaining defendants,
24 and in doing the things hereinafter alleged, was acting within
25 the scope of such agency.
26

VII

Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1-100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

VIII

On or about November, 1979, at Sunnyvale, California, plaintiff and defendants, and each of them, entered into a series of negotiations for the purchase of 390,000 shares of common stock representing all of the issued and outstanding shares of Vectorbeam, a California corporation, by plaintiff, from Cinematronics, Inc. Plaintiff was represented by H. Kauffman. Defendant Cinematronics, Inc., was represented by Phillip S. De Caro, an attorney, licensed to practice law in California.

IX

As a result of these negotiations, on or about December 5, 1979, in Santa Clara County, plaintiff, through its officers H. R. Kauffman and Howell Ivy, and defendant Cinematronics, Inc., through its officers Jim Pierce and Thomas B. Stroud, Jr., executed a Stock Purchase Agreement drafted by defendant Cinematronics' agent, Phillip S. DeCaro. A copy of said Stock Purchase Agreement is attached hereto as Exhibit "A" and incorporated herein by reference. Vectorbeam executed a Corporate Installment Note drafted by defendant Cinematronics' agent, Phillip S. DeCaro in favor of defendant Cinematronics,

1 Inc., in the amount of \$526,942.00, as payment for all of
2 on which plaintiff liable by virtue of its guarantee.
3 the issued stock of Vectorbeam/ A copy of said Corporate

4 Installment Note is attached hereto as Exhibit "B" and
5 incorporated herein by reference. The Stock Purchase Agreement
6 provides that in the event of any controversy, claim or
7 dispute between the parties hereto, arising out of or relating
8 to this agreement or any breach thereof, the prevailing
9 party shall be entitled to recover from the losing party
reasonable expenses, attorney's fees and costs.

10 X

11 Prior to execution of the Stock Purchase Agreement,
12 defendant Cinematronics, Inc., made a series of false and
13 fraudulent representations to plaintiff including the following:

14 1. That the financial statements and information on
15 Vectorbeam delivered to plaintiff fairly presented the
16 financial condition of Vectorbeam as of that date and fairly
17 outlined the results of Vectorbeam's operation for the
18 periods indicated, in accordance with generally accepted
19 accounting principles consistently applied.

20 2. That Vectorbeam was not subject to any undisclosed
21 liability or liabilities of any kind, absolute or contingent.

22 3. That Vectorbeam was not a party to any contracts
23 or commitments of any kind except those disclosed in the Stock
24 Purchase Agreement executed on December 5, 1979.

25 4. That the Stock Purchase Agreement accurately and truly
26 reflected the terms of that Stock Purchase Agreement as they

1 had been agreed to by the parties to the Stock Purchase Agreement.

2 5. That the inventory of Vectorbeam was accurately valued.

3 6. That Vectorbeam's accounts receivable represented only
4 amounts legitimately believed to be owed to Vectorbeam.

5 7. That Vectorbeam's accounts payable represented only
6 amounts owed by Vectorbeam for goods and services sold and
7 delivered to Vectorbeam.

8 8. That defendant Cinematronics would permit the Corporate
by virtue of its guarantee
Installment Note, whereby plaintiff/promised to pay Cinematronics
10 \$487,160 in monthly installments of \$35,000, to be subordinated
11 under normal and usual terms to loans made by institutional
12 lenders for inventory and accounts receivable financing.

13 9. That the subsequent adjustments provision contained
14 in the Stock Purchase Agreement (paragraph 6) would protect
15 plaintiff from any liability arising out of plaintiff's
16 reliance on the interim and preliminary financial information,
17 which defendant Cinematronics furnished to plaintiff.

18 XI

19 The representations made by defendants, and each of them,
20 were in fact false. The true facts were:

21 1. The financial statements and information on Vectorbeam
22 delivered to plaintiff did not fairly outline the results of
23 Vectorbeam's operation for the periods indicated. Instead,
24 the financial statements provided materially overvalued
25 inventory and accounts receivable of Vectorbeam, and they
26 failed to disclose contractual liabilities owed by Vectorbeam.

1 2. Vectorbeam was, in fact, subject to material liabilities
2 not incurred in the ordinary course of business, which were not
3 disclosed at any time in the negotiations or in the Purchase
4 Agreement itself. Specifically, an equipment and furniture
5 lease and an automobile lease, copies of which leases are
6 attached hereto as Exhibits "C" and "D" respectively and
7 incorporated by reference, were not disclosed.

8 3. Vectorbeam was, in fact, a party to material contracts
9 and commitments not disclosed in the Stock Purchase Agreement,
10 including an equipment and office furniture lease and an
11 automobile lease. (Refer to Exhibits "C" and "D" attached)

12 4. The Stock Purchase Agreement did not accurately and
13 truly reflect the terms of that Stock Purchase Agreement as
14 they had been agreed to by the parties to the Stock Purchase
15 Agreement. The Stock Purchase Agreement incorporated a provision
16 whereby plaintiff assumed liability on the Gil Levine Employment
17 Agreement, a copy of which is attached hereto as Exhibit "E" and
18 incorporated by reference. The inclusion of this provision was
19 directly contrary to the understanding of all parties to the
20 contract.

21 5. The inventory of Vectorbeam was not accurately valued
22 In fact, it was overvalued by an amount believed to be in excess
23 of \$325,000.00.

24 6. Vectorbeam's accounts receivable did not represent only
25 amounts legitimately believed to be owed to Vectorbeam. In fact,
26 it included a debt in the amount of \$19,678.18 which the creditor,

1 R. H. Belam Co., had set off against monies owed to said creditor
2 by Cinematronics.

3 7. Vectorbeam's accounts payable did not represent only
4 amounts owed by Vectorbeam for goods and services sold and
5 delivered to Vectorbeam. Rather, they included a debt
6 allegedly owed by Vectorbeam to L & M Sheet Metal Fabricating
7 in the amount of \$14,344.00 for goods not delivered to
8 Vectorbeam.

9 8. Cinematronics has refused and continues to refuse to
10 subordinate the Corporate Installment Note of plaintiff.

11 9. The Subsequent Adjustments provision of the Stock
12 Purchase Agreement does not, in fact, protect plaintiff from
13 any damages caused by plaintiff's reliance on the interim
14 and preliminary financial information.

15 XII

16 When defendants, and each of them, made the above
17 representations they knew them to be false, and these representa-
18 tions were made by defendants, and each of them, with the
19 intent to defraud and deceive plaintiff and with the intent
20 to induce plaintiff to act in the manner herein alleged.

21 XIII

22 Plaintiff, at the time these representations were made by
23 defendants, and each of them, and at the time plaintiff took
24 the actions herein alleged was ignorant of the falsity of
25 defendants', and each of their, representations and believed
26

1 them to be true. In reliance on these representations
2 plaintiff was induced to and did execute the above-mentioned
3 Stock Purchase Agreement and Installment Note referenced above
4 in paragraph IX. Had plaintiff known the actual facts it
5 would not have taken such actions. Plaintiff's reliance on
6 defendants', and each of their, representations was justified
7 because defendants, and each of them, controlled Vectorbeam
8 and had access to all of its books and records, and assured
9 plaintiff that the representations and warranties made were
10 accurate and true and that it would carry out its contractual
11 obligations.

12 XIV

13 As a proximate result of defendants', and each of their,
14 fraud and deceit and the facts herein alleged, plaintiff was
15 induced to execute the above-mentioned Stock Purchase Agreement
16 and to purchase all of the issued and outstanding shares of
17 Vectorbeam for a materially inflated price.

18 XV

19 As a further proximate result of defendants', and each of
20 their, fraud and deceit, plaintiff became liable on a
21 contract it had expressly refused to accept liability for, became
22 liable for undisclosed liabilities and contracts of Vectorbeam,
23 and assumed liability for goods not delivered to Vectorbeam.

24 XVI

25 As a further proximate result of defendants', and each of
26 their, fraud and deceit and the facts alleged herein, plaintiff

1 was induced to execute the above-mentioned Corporate Installment
2 Note in an amount in excess of its real value. By reason of
3 the facts herein alleged, plaintiff has been damaged in a
4 sum not yet ascertained. Accordingly, plaintiff prays leave to
5 amend this Complaint when said sums are ascertained.

6
7 XVII

8 In doing the acts herein alleged, defendant acted with
9 oppression, fraud and malice, and plaintiff is entitled to
10 punitive damages in the sum of \$250,000.00

11 SECOND CAUSE OF ACTION
(NEGLIGENT MISREPRESENTATION)

12 I

13 Plaintiff hereby incorporates by reference paragraphs
14 I through XI, inclusive, of the First Cause of Action.

15 II

16 Defendants, and each of them, made these representations
17 with no reasonable ground for believing them to be true.
18 Plaintiff is informed and believes and thereon alleges that
19 defendants, and each of them, did not have accurate information
20 upon which to base their representations. At the time of
21 making these representations and at all times thereafter
22 relevant, defendants, and each of them, concealed from plaintiff
23 their lack of information and their consequent inability to
24 make the alleged representations accurately.

25 III

26 These representations were made by defendants, and each of

them, with the intention to induce plaintiff to act in the manner herein alleged.

IV

Plaintiff hereby incorporates by reference paragraphs XIII through XVI, inclusive, of the First Cause of Action.

THIRD CAUSE OF ACTION
(REFORMATION)

2

Plaintiff hereby incorporates by reference paragraphs I through VII, inclusive, of plaintiff's First Cause of Action.

II

Prior to December 5, 1979, plaintiff and defendants, and each of them, orally agreed on the terms of the Vectorbeam stock purchase (referenced above in plaintiff's First Cause of Action), and the method of ascertaining the purchase price for plaintiff's purchase of all of the issued shares of Vectorbeam.

III

On or about December 5, 1979, said oral agreements were purported to be put into writings in the form of a Stock Purchase Agreement and a Corporate Installment Note.

Said writings were drafted by defendant's agent, Phillip S. DeCaro, and plaintiff signed said writings in reasonable reliance on Phillip S. DeCaro's representation that said written agreements accurately and actually embodied said

1 oral agreement, and without knowledge that they did not represent
2 said oral agreement. Plaintiff's reliance on the conformity of
3 the Stock Purchase Agreement to the oral agreement was reasonable
4 in that defendant had orally acquiesced to plaintiff's demand that
5 defendant hold plaintiff harmless on the Gil Levine Employment ,
6 Agreement, and defendant had assured plaintiff that the Stock
7 Purchase Agreement would reflect that understanding. Plaintiff's
8 reliance on defendant's assurances that the Promissory Note
9 accurately embodied the agreement of the parties was reasonable
10 due to the fact that defendants, and each of them, alone had
11 access to the total financial, operational and inventory
12 records of Vectorbeam, and the fact that defendants, and
13 each of them, had assured plaintiff orally and in writing
14 that the inventory was accurately valued.

15 v

16 Said written agreement did not represent said oral
17 agreement to which plaintiff agreed in numerous respects,
including the following:

18 Although plaintiff and defendants, and each of them,
19 had expressly agreed that plaintiff would not assume liability
20 on the Gil Levine Employment Contract, the Stock Purchase
21 Agreement purports to hold plaintiff liable on this employment
22 contract. Further, plaintiff and defendants, and each of them,
23 had expressly agreed that the purchase price paid by plaintiff
24 and embodied in the Corporate Installment Note would be
25 determined on the basis of an accurate inventory valuation;
in fact, the inventory was valued at a figure which exceeds
26 the actual value of the inventory by an amount in excess of
\$325,000, and the amount of the Corporate Installment Note

III

Pursuant to the agreement alleged in paragraph II herein, and plaintiff guaranteed Vectorbeam executed a Corporate Installment Note in the amount of \$526,942.00 in favor of defendant Cinematronics as full payment of the securities. Plaintiff made the first \$35,000 installment payment due under the note when it came due on or about March 1, 1980.

IV

Prior to the payment by plaintiff to defendant Cinematronics of the consideration for the securities as alleged in paragraph III herein, defendant Cinematronics warranted to plaintiff that the Vectorbeam inventory, which is the principal asset of the corporation, was accurately valued in accordance with generally accepted accounting practice consistently applied.

V

In truth and in fact, the Vectorbeam inventory which is the principal asset of the corporation is not accurately valued in accordance with generally accepted accounting practices consistently applied in that it overstated the value of the inventory in excess of \$325,000.00.

VI

As a result of the above-described transaction, plaintiff has suffered damages compensable under Corporations Code, § 25501, in an amount unknown at this time. Plaintiff prays leave to amend this Complaint when said sums are ascertained.

1 FIFTH CAUSE OF ACTION

2 I

3 Plaintiff hereby incorporates by reference paragraphs I
4 through IX of plaintiff's First Cause of Action.

5 II

6 Plaintiff hereby incorporates by reference paragraphs II
7 through III of plaintiff's Fourth Cause of Action.

8 III

9 By the terms of the Stock Purchase Agreement, defendants,
10 and each of them, disclosed that the sale of securities in
11 question had not been qualified by the California Commissioner
12 of Corporations. By the terms of the Stock Purchase Agreement
13 defendants, and each of them, further stated that until such
14 qualification had been obtained, any purported sale of
15 Vectorbeam securities would be void.

16 IV

17 Prior to the payment by plaintiff to defendants, and each
18 of them, of the consideration for the securities as alleged
19 in paragraph II herein, defendants, and each of them, warranted
20 to plaintiff that the required consent to transfer had been
21 obtained from the Commissioner of Corporations.

22 V

23 In truth and in fact, the required consent to transfer
24 had not been obtained by defendants, and each of them, from
25 the Commissioner of Corporations, and the sale did not
26

1 comply with the provisions of the California Corporate
2 Securities Law of 1968.

3 VI

4 As a result of the above-described transaction, plaintiff
5 has suffered damages in an amount unknown at this time. Plaintiff
6 prays leave to amend this Complaint, when the amount of said
7 damages is ascertained.

8
9 SIXTH CAUSE OF ACTION
10 (BREACH OF CONTRACT)

11 I

12 Plaintiff hereby incorporates by reference paragraphs I
13 through IX of plaintiff's First Cause of Action.

14 II

15 Plaintiff's duty of performance of the Stock Purchase
16 Agreement is subject to the express condition that all of
17 defendants', and each of their, warranties and representations
18 made in the Stock Purchase Agreement are substantially correct.

19 III

20 Plaintiff has performed all conditions, covenants and
21 promises under the contract on his part to be performed except
22 tender of the April 1, 1980 payment in the amount of \$35,000,
23 performance of which was excused on the ground that defendants',
24 and each of their, material breach of the contract excused
25 plaintiff's duty of performance and on the further ground
26 that plaintiff's duty of performance was excused by the

1 failure of the express condition that all of defendants', and
2 each of their, warranties and representations were substantially
3 true.

4 IV

5 Prior to the filing of this Complaint, defendants, and each
6 of them, breached the Stock Purchase Agreement in several
7 respects, including the following:

8 1. Failure of consideration in that the Vectorbeam
9 inventory which is the principal asset of the corporation
10 was materially over-valued.

11 2. Prior to the filing of this Complaint, defendants, and
12 each of them, further breached the Stock Purchase Agreement
13 by breach of the warranty that all financial statements and
14 information delivered to plaintiff by defendants, and each of
15 them, fairly presented the financial condition of the company
16 as of that date and fairly outlined the results of its operation
17 for the periods listed in accordance with generally accepted
18 accounting practices consistently applied.

19 3. Prior to the filing of this Complaint defendants, and
20 each of them, further breached the Stock Purchase Agreement
21 in that defendants, and each of them, failed and refused and
22 have continued to fail and refuse to agree to permit the
23 subordination of the Corporate Installment Note to inventory and
24 accounts receivable financing by institutional lenders.

25 V

26 As a result of defendants', and each of their, breach of

1 the Stock Purchase Agreement, plaintiff has been damaged in
2 an amount not yet ascertained. Plaintiff prays leave to amend
3 this Complaint when said sums are ascertained.

4
5 SEVENTH CAUSE OF ACTION

6 I

7 Plaintiff hereby incorporates by reference paragraphs I
8 through IX of plaintiff's First Cause of Action.

9 II

10 By the terms of the above-mentioned Stock Purchase Agreement
11 defendants, and each of them, warranted that the financial
12 statements and information delivered to plaintiff fairly
13 present the financial condition of the company as of that
14 date and fairly outline the results of its operations for
15 the periods indicated, in accordance with generally accepted
16 accounting principles consistently applied. Said Stock
17 Purchase Agreement further provides for arbitration in the
18 event that plaintiff believes that adjustments to the purchase
19 price are necessary because of overstatement of accounts
20 receivable, a material omission of notes payable or accounts
21 payable and/or significant inventory shortages due to physical
22 shortages, not write-downs for obsolescence.

23 III

24 An actual controversy has arisen and now exists relating
25 to the rights and duties of the parties herein in that plaintiff
26 contends that the arbitration clause of the Stock Purchase

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1 is attached hereto as Exhibit "F" and made a part hereof,
2 whereby defendant promised to indemnify plaintiff and hold him
3 harmless from liability on the Gil Levine Employment Contract.

4 IV

5 That on or about March 17, 1980, Gil Levine made a claim
6 against Vectorbeam and plaintiff herein arising out of said
7 employment agreement.

8 V

9 Plaintiff has tendered to plaintiff the defense and
10 indemnification of said claim, but defendant has refused to
11 defend and/or indemnify plaintiff herein.

12 VI

13 Plaintiff has been forced to incur, has in fact incurred,
14 and will continue to incur, attorney's fees and costs in
15 defending the action of Gil Levine. When the exact and full
16 amount of such fees and costs becomes known to plaintiff, it
17 will move to amend this Complaint to state such amount.

18 VII

19 Plaintiff desires a judicial declaration that defendant is
20 obliged to defend and indemnify plaintiff herein, and should
21 plaintiff suffer any costs or expenses hereby, plaintiff be
22 awarded judgment against defendant in a like sum.

23 WHEREFORE, plaintiff prays judgment as follows:

- 24 1. For compensating damages according to proof.
25 2. For punitive damages in the sum of \$250,000.00
26 3. For attorney's fees.

- 1 4. For costs of suit incurred herein;
- 2 5. That the Stock Purchase Agreement be reformed to
- 3 show the real intent of the parties.
- 4 6. That the Corporate Installment Note be reformed to
- 5 show the true intent of the parties.
- 6 7. That plaintiff be awarded such other and further relief
- 7 as is just and reasonable under the circumstances.
- 8 8. For a declaration that the arbitration provision of
- 9 the Stock Purchase Agreement is void and of no force and effect.
- 10 10. For a declaration that defendant Cinematronics is
- 11 obliged to defend and indemnify plaintiff herein against any
- 12 claims made under the Gil Levine Employment Agreement.

13

14 Dated: April 17, 1980.

15 CRIST, CRIST, GRIFFITHS,

16 BRYANT, SCHULZ & BIORN

17

18 ROBERT E. SCHULZ

19 By _____

20 Robert E. Schulz

21 Attorneys for Plaintiff

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23

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26

PETTIT & MARTIN
ATTORNEYS AT LAW

THE TRANSAMERICA BUILDING
800 MONTGOMERY STREET
TWENTY-FIRST FLOOR

SAN FRANCISCO, CALIFORNIA 94111
(415) 434-4000

March 17, 1980

1000 MASSACHUSETTS AVENUE, N.E.
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1000 295-6510

OF COUNSEL
DAVID F. BROWN
JOHN L. BRIDGES
JAMES E. CANNON
DAVID J. GALT
DAVID J. GALT

Mr. H. R. Kauffman
President
Vectorbeam/Exidy
33441 Central Avenue
Union City, California 94587

Re: Gil Levine

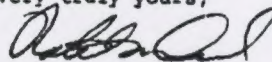
Dear Mr. Kauffman:

We represent Mr. Gil Levine. He has informed us of a dispute that he has with you concerning his employment contract. This dispute concerns the termination of Mr. Levine's employment by you.

This letter is our formal demand for arbitration of this dispute in accordance with the terms of Mr. Levine's employment contract. Please have your attorney contact us to discuss the selection of arbitrators as provided for by that contract as soon as possible.

If we do not hear from you within 15 days from the date of this letter, we will assume that you have refused to arbitrate this matter and will seek a court order to compel such arbitration in accordance with Section 1281.2 of the California Code of Civil Procedure.

Very truly yours,


Robert H. Cassel

RMC:laj
cc: Gilbert Levine

C-1

April 9, 1980

Mr. Jim Pierce
President
Cinematronics, Inc.
1466 Pioneer Way, Suite 6
El Caho, CA 92020

Re: Gil Levine

Dear Mr. Pierce:

As you know, this office represents Exidy and Vectorbeam. We have recently received a letter from an attorney for Mr. Gil Levine, a copy of which I enclose.

As I believe you are aware, an indemnification agreement was entered into at the time of the Stock Purchase Agreement whereby Cinematronics agreed to defend and indemnify Vectorbeam and Exidy from any claim arising out of the Levine employment agreement. Please consider this letter a tender of the defense of this claim and a request to be indemnified from Mr. Levine in this matter.

Very truly yours,

CRIST, CRIST, GRIFFITHS,
BRYANT, SCHULZ & BIORN

Robert E. Schulz

RMS
cc: Phillip De Caro w/enclosure
enclosure

bcc: Leslie Hauser

PETTIT & MARTIN

ATTORNEYS AT LAW

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2000

[illegible]

Robert E. Schulz, Esq.
Crist, Crist, Griffiths,
Bryant, Schulz & Biorn
550 Hamilton Avenue
P.O. Box 90
Palo Alto, CA 94301

Re: Gil Levine

Dear Mr. Schulz:

This is in response to your letter dated April 8, 1980 to Mr. Robert M. Cassel. In that letter you claimed that Mr. Levine's employment contract with Vectorbeam has been terminated by a letter of resignation dated October 4, 1979.

We disagree with your conclusion concerning the October 4, 1979 letter. Mr. Levine did tender that letter to James Pierce, the Chairman of the Board of Vectorbeam. Mr. Pierce, however, refused to accept that resignation. Instead, he agreed to a modified business plan for Vectorbeam and, indeed, increased Mr. Levine's salary. Accordingly, Mr. Levine continued to remain employed by Vectorbeam pursuant to his contract.

You may confirm these facts if you wish with Mr. Pierce. In any event, we still intend to take this matter to arbitration. Please contact me within the next week to begin the selection of arbitrators. If I do not hear from you, we will petition for an appropriate order from Superior Court.

Very truly yours,

PETTIT & MARTIN

Charles B. Leonard

Charles B. Klinedinst

CBK : rdh

cc: Gilbert J. Levine
Robert M. Cassel, Esq.

C-3